YAP YIN KOK

v.

PUBLIC PROSECUTOR

HIGH COURT, SINGAPORE
CHAN SEK KEONG JC
[SHOW CAUSE NO. 4 OF 1987]
7 SEPTEMBER 1987

CRIMINAL PROCEDURE: *Bail - Surety bond - Surety's obligation - Extent of obligation for appearance of appellant in High Court for prosecution of appeal against sentence - Failure of appellant and surety to appear on date of hearing of appeal - Surety's obligation to be determined by terms of bond - Whether bond covered duration of appeal - Degree of diligence shown by surety - Whether any exceptional case for remitting only part of penalty. Construction - Surety bond - Interpretation of terms of bond - To determine extent of surety's obligation under surety bond - Ordinary principles of construction - Whether surety bond is same as guarantee given in a civil contract.*

This case concerns the extent of the obligation of a surety under a surety bond for the appearance of an appellant in the High Court, for the prosecution of his appeal against sentence of imprisonment.

Held:

[1] The extent of the surety's obligation under the bond is determined by the terms of the bond. The surety bond is no different to a guarantee given in a civil contract and therefore ordinary principles of construction apply in the interpretation of the terms of the bond to determine the extent of the surety's obligation thereunder.

[2] The conditions of the bond executed by the surety imposed on him an obligation to produce the appellant at every stage of the hearing of the appeal, including any adjournments thereof from time to time, for whatever reason, until its final disposal.

[3] The degree of diligence that the surety has shown in this case, was on a scale of 10, probably one. This was not an exceptional case for remitting any part of the penalty and the surety must pay the full sum of $5,000.

[Surety ordered to pay full sum of $5,000 under bond.]

Cases referred to:

R. v. Southampton Justicse ex parte Green [1976] 1 QBD 11
R. v. Waltham Forest Justices, ex p Parfrey [1980] Cr LR 571
R. v. Knightsbridge Crown Court [1980] Cr LR 715

Legislation referred to:

Criminal Procedure Code [Sing], ss. 36(2), (5), 246(3), (4), 247

For the surety - Ronald Ng
For the public prosecutor - Jasvender Kaur, DPP

JUDGMENT

Chan Sek Keong JC:

This case concerns the extent of the obligation of a surety under a surety bond for the appearance of an appellant in the High Court for the prosecution of his appeal against sentence of imprisonment.

The bond which was signed by the surety together with the appellant on 29 July 1986 read as follows:

> ... I, Yap Yin Kok, the abovenamed appellant, having been granted bail pending appeal pursuant to s. 247 of the Criminal Procedure Code, Cap 113, do hereby bind myself as follows:
>
> (1) That in the event of my failing to lodge a petition of appeal as provided by s. 246(3) of the Criminal Procedure Code, I shall personally appear at Court No. 26, Subordinate Courts at Singapore on the eleventh day after I have received the signed copy of the grounds of judgment provided by s. 246(3) of the said Code then and there to surrender myself forthwith to undergo the sentence ordered by the said Court, and
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> (2) That in the event of my lodging a petition of appeal as provided by s. 246(4) of the Criminal Procedure Code, I shall personally appear at the High Court during the hearing of the Appeal then and there to abide by the decision of the said High Court on the said Appeal and surrender myself forthwith to undergo the sentence or pay the penalty ordered or which may be ordered by the High Court on the said Appeal:
>
> (3) That for so long as this bond shall remain in force, I shall not, without the permission of the Court, proceed beyond the limits of Singapore.
>
> ... I, Wong Ee Tay, I/C 0753178H of Blk 56 Sims Dr #05-1091 do hereby declare myself surety of the abovenamed appellant that he shall abide by the conditions of this bond as stated above and in the case of his making default herein, I bind myself jointly and severally to forfeit to the Government the sum of dollars Five thousand.

The relevant appeal was fixed for hearing on 28 January 1987 before the Chief Justice. The appellant appeared with his Counsel who applied to be discharged. Counsel was discharged. The hearing was then adjourned to a date to be fixed and bail was extended.

By a notice dated 4 March 1987 from the Supreme Court Registry, the appellant and the surety were duly informed that the date of hearing of the appeal had been fixed for 6 April 1987.

On 6 April 1987, both the appellant and the surety failed to appear. The Court then ordered that a warrant of arrest be issued against the appellant and also directed that the surety be asked to show cause on his bond. The hearing of the appeal was adjourned to a date which was subsequently fixed as 28 April 1987.

On 28 April 1987, a notice dated the same day was issued by the Assistant Registrar of the Supreme Court addressed to the surety requiring him to pay the sum of $5,000 for defaulting under his bond or to appear before the High Court on 29 June 1987 to show cause why payment of the said sum should not be enforced against him.

On 28 April 1987, the appellant surrendered himself at the High Court. His appeal against sentence was then heard and dismissed by the Court.

On 29 June 1987, the surety's son attended the hearing to show cause. He submitted a letter stating that his father was in the United States and would be returning at the end of July 1987. He requested for an adjournment so that his father could appear personally.

The surety has now appeared to show cause. His evidence was that on 28 January 1987 he was outside the Court room when the hearing of the appeal was adjourned. After the adjournment he asked the appellant when the next hearing date was and the appellant replied that he did not know as he had not been given a date yet. The surety who was a dealer in furniture, left Singapore for New York on 19 February 1987 and returned to Singapore on 25 August 1987. When cross-examined, the surety said that he had not expected to be away from Singapore for six months.

Counsel for the surety made two submissions: (1) on the law, that the surety's obligation under the bond to produce the appellant at the High Court for the hearing of the appeal ended on 28 January 1987 when the appellant appeared before the Chief Justice; and that as bail was extended unilaterally without the surety's express consent, the surety was no longer bound by the bond; (2) on the facts, since the surety had no knowledge of the date of the subsequent hearing, he had shown sufficient cause for the remission of the penalty.

The Deputy Public Prosecutor contended that the surety had no excuse and that his bond covered the duration of the appeal. She referred to that part of the affidavit dated 29 July 1986 made by the surety in connection with the giving of the bond where he deposed:

> I am willing and ready to stand as surety for Yap Yin Kok in the sum of dollars Five thousand ($5000) until all proceedings relating to the case/s have been disposed of.

I reject the first submission of Counsel for the surety that his client's obligation to produce the appellant at the hearing of the appeal ended on 28 January 1987. The extent of the surety's obligation under the bond is determined by the terms of the bond. A surety bond is no different to a guarantee given in a civil contract (see *R. v. Southampton Justices ex parte Green* [1976] 1 QBD 11). Any breach of the conditions of the bond gives rise to a forfeiture and the amount forfeited is in the nature of a civil debt. Under s. 36(2) of the Criminal Procedure Code, this debt is enforceable by the Court by issuing a warrant for the attachment and sale of the property belonging to that person but this remedy does not prevent the Government from enforcing the bond under the Government Proceedings Act (see s. 36(5). Therefore ordinary principles of construction apply in the interpretation of the terms of the bond to determine the extent of the surety's obligation thereunder.

The relevant part of the bond executed by the surety provides that the surety shall abide by the conditions of the bond, which in this case, were that the appellant.

> shall personally appear at the High Court during the hearing of the Appeal then and there to abide by the decision of the said High Court on the said Appeal **and** surrender myself forthwith to undergo the sentence or pay the penalty ordered or which may be ordered by the High Court on the said Appeal. (emphasis added)

In my view, there is no room for doubt as to the meaning of these words. They impose on the surety an obligation to produce the appellant at every stage of the hearing of the appeal, including any adjournments, thereof from time to time, for whatever reason, until its final disposal. If the surety did not understand the bond to have this effect, he would not have asked the appellant the date of the next hearing. If I accept Counsel's submission, I have to construe these words to apply to the first appearance only with the consequence that the appellant's bail has to be extended for every subsequent day of his trial or appeal. That cannot be right. It is true that in this case bail was extended but that was probably applied for as a matter of long practice *ex abundanti cautela.*

In respect of the obligation of the surety to procure the attendance of the accused at his trial or appeal, it cannot be emphasized too strongly or frequently that the obligation is a very serious one. Donaldson LJ (as he then was) had these observations to make in *R. v. Waltham Forest Justices, ex p Parfrey* [1980] Cr LR 571.

> The obligation entered into by someone who enters into a recognisance as a surety is a very serious obligation indeed. I hope that nothing I say today will suggest the contrary. There is an obligation on a surety to be fully satisfied that he or she can meet the liability which will arise if the accused person does not surrender to his bail. This failure to surrender is not a theoretical possibility, though a surety may think it is. The unhappy event of arrested persons not surrendering happens frequently. There is a real risk. Indeed it is difficult to conceive of a set of circumstances in which a surety can be absolutely sure that the accused will surrender to his bail. So let no one think that this is an obligation which can be entered into lightly. Furthermore, the burden of satisfying a Court that the full sum should not be forfeit is a very heavy one, so again let no one think that they can simply appear before the magistrates and tell some hard luck story, whereupon the magistrates will say, "Well, be more careful in future." We are not dealing with that character of obligation at all.

In *R. v. Knightsbridge Crown Court* [1980] Cr LR 715, Donaldson L.J. said:

> It has been said by this Court, and by other Courts time and again, that entering into suretyship (going bail for someone, to use the common phrase) is an extremely serious matter not to be lightly undertaken, and those who go bail must understand that, if the accused fails to surrender to his bail, it is only in the most exceptional cases that the Court will be prepared to modify the *prima facie* position, which is that the amount for which the person concerned has stood surety will be forfeit in full.

Thus, because of the serious nature of the obligation, it cannot be said

> the mere fact that every effort to secure the appearance of the accused man had been made and that there was no want of diligence involved the proposition that the amount of the obligation should be remitted entirely.

Per Donaldson LJ in *Ex p Parfrey*.

What degree of diligence has the surety shown in this case? On a scale of 10, probably one. He had merely asked the appellant when the new date of hearing was and on being told that it had not been given yet, he went to New York. The notice of hearing was sent to his home address. In his evidence, he has not denied receiving it. During his long sojourn overseas, he appeared to have done nothing at all to keep in touch with the appellant or his son to ensure that any official communication as to the next hearing date was transmitted to him. In contrast, he was able to and did communicate with his son in respect of the notice dated 28 April 1987 to show cause. There was therefore no excuse at all.

This is not an exceptional case for remitting any part of the penalty. The surety must pay the full sum of $5000.

Also found at [1988] 1 CLJ 213